

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlo Vescovi	Team: Squad #14	CCRB Case #: 202002863	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/22/2020 4:00 PM, Wednesday, 04/22/2020 4:30 PM	Location of Incident: Adee Avenue between Laconia Avenue and Yates Avenue, 47th Precinct Stationhouse	Precinct: 47	18 Mo. SOL 10/22/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 04/24/2020 1:17 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 04/24/2020 1:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Santomero	16608	956238	047 PCT
2. POM Paul Kelly	03683	959726	047 PCT
3. POM Alexis Melo	21165	963161	047 PCT
4. POM Kelvin Guillen	01542	952815	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rashawn Merrick	21166	963164	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nicholas Santomero	Force: On Adee Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero pointed his gun at § 87(2)(b)	
B.POM Nicholas Santomero	Abuse: On Adee Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero threatened § 87(2)(b) with the use of force.	
C.POM Nicholas Santomero	Abuse: On Adee Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero seized § 87(2)(b) property.	
D.POM Paul Kelly	Abuse: At the 47th Precinct Stationhouse, Police Officer Paul Kelly threatened § 87(2)(b) with the use of force.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On April 24th, 2021, § 87(2)(b) filed the following complaint with the CCRB via online website.

On April 22nd, 2021, at approximately 4:00pm, § 87(2)(b) was alone driving his white BMW § 87(2)(b) near Burke Avenue and Paulding Avenue in the Bronx. Police Officers Nicholas Santomero and Paul Kelly, of the 47th Precinct, stopped § 87(2)(b) vehicle. Police Officers Alexis Melo, Rashawn Merrick, and Kelvin Guillen, also of the 47th Precinct, arrived moments later for assistance. PO Santomero allegedly pointed his gun at § 87(2)(b) (**Allegation A: Force**, § 87(2)(g) § 87(2)(b) was removed from the vehicle and handcuffed. § 87(2)(b) told PO Santomero that if PO Santomero were not wearing a shield that § 87(2)(b) would “slap the shit out of him” and PO Santomero then allegedly told § 87(2)(b) he would “take [his shield] off” (**Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was placed under arrest for misdemeanor reckless driving, window tints, and failure to yield to an emergency vehicle and transported to the 47th Precinct stationhouse. PO Santomero removed § 87(2)(b) vehicle to the stationhouse (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

At the 47th Precinct stationhouse, PO Kelly allegedly told § 87(2)(b) “Hey big man, we get off at 10:00 – scratch that, we get off at 9:45, we’ll see you at 9:45” (**Allegation D: Abuse of Authority,** § 87(2)(g) [REDACTED])

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was released from the 47th Precinct stationhouse with summonses for misdemeanor reckless driving, window tints, and failure to yield to an emergency vehicle (BR 01-05).

BWC was received for this incident, the relevant aspects of which are discussed below.

Findings and Recommendations

Allegation (A) Force: On Adeo Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero pointed his gun at § 87(2)(b)

The investigation established the following facts: On April 22nd, 2020, § 87(2)(b) was the operator and sole occupant of a white § 87(2)(b) BMW § 87(2)(b). § 87(2)(b) drove past PO Santomero's police vehicle near the intersection of Burke Avenue and Paulding Avenue in the Bronx. PO Santomero conducted a vehicle stop and pointed his gun at § 87(2)(b).

§ 87(2)(b) testified (BR 06) he was driving on Boston Post Road near Paulding Avenue when he noticed an unmarked black Ford Taurus activate sirens approximately one avenue's length behind him. § 87(2)(b) decelerated his vehicle, and the Taurus deactivated its siren. § 87(2)(b) believed that the police vehicle was not requesting him to pull over and so he reaccelerated and continued driving normally. Shortly after, § 87(2)(b) turned left off Boston Post Road onto Adea Avenue in the Bronx. § 87(2)(b) stated that he was driving slowly and, "with caution," having previously noticed the black Taurus. As § 87(2)(b) completed his turn onto Adea Avenue, the Taurus pulled alongside § 87(2)(b) vehicle and reactivated its siren. Then the Taurus pulled in front of § 87(2)(b) vehicle, cutting him off. § 87(2)(b) rolled his window down. PO Santomero exited the Taurus and walked towards § 87(2)(b) driver's side window. PO Santomero drew his gun with his right hand and pointed it at § 87(2)(b). PO Santomero continued to point the gun at § 87(2)(b) as he walked towards § 87(2)(b) vehicle. PO Santomero reached inside § 87(2)(b) window and manually opened § 87(2)(b) driver's side door while still pointing the gun. PO Santomero placed his left arm on § 87(2)(b) arm and pulled him up and outside of the vehicle. Once § 87(2)(b) was standing outside the vehicle, PO Santomero holstered his gun.

PO Santomero testified (BR 07) that he, PO Kelly, PO Melo, PO Merrick, and PO Guillen responded to either a shotspotter activation or a shots fired call, he could not recall which, near the intersection of Burke Avenue and Paulding Avenue. PO Santomero had no information other than that shots were reported, and had no information to indicate that shots were fired from a vehicle. PO Santomero arrived at that location to investigate the call. PO Melo, PO Merrick, and PO Guillen were already on scene. Neither PO Santomero nor PO Kelly had exited their patrol vehicle when PO Santomero noticed § 87(2)(b) vehicle approaching from behind at a speed higher than the legal limit. § 87(2)(b) vehicle almost collided with PO Santomero's, but § 87(2)(b) swerved left, and drove momentarily into oncoming traffic. § 87(2)(b) nearly collided with a parked police vehicle and drove away. PO Santomero and PO Kelly, followed by PO Merrick, PO Guillen, and PO Melo pursued § 87(2)(b) vehicle. § 87(2)(b) continued to drive above the legal speed limit and ignored at least one stop sign. PO Santomero had not yet activated either his lights or sirens. Approximately five blocks later, near Burke Avenue and Laconia Avenue, PO Santomero activated his lights and § 87(2)(b) continued to drive for half a block. PO Santomero overtook § 87(2)(b) vehicle and stopped in front of him, forcing § 87(2)(b) to stop. PO Santomero exited the driver's side of the vehicle and drew his gun. PO Santomero pointed his gun at § 87(2)(b) because he believed that § 87(2)(b) may have been armed. PO Santomero believed § 87(2)(b) was possibly armed because he observed § 87(2)(b) drive his vehicle recklessly, fail to yield to an emergency vehicle, and ignore at least one stop sign; § 87(2)(b) adjacency to the shots fired call; and § 87(2)(b) tinted windows. PO Santomero testified that at the point that he reached § 87(2)(b) driver's side window, he considered § 87(2)(b) to be under arrest for reckless driving. PO Santomero asked § 87(2)(b) to step out of the vehicle, at which point § 87(2)(b) exited the driver's seat.

PO Kelly testified (BR 08) that he was on patrol with PO Santomero in an unmarked vehicle when the two observed § 87(2)(b) driving recklessly, though PO Kelly could not be more specific. PO Kelly could not recall the location he and PO Santomero were in when he observed § 87(2)(b) nor could he recall any shots fired calls on the date. PO Kelly could not recall if there was any pursuit of § 87(2)(b) vehicle or if § 87(2)(b) pulled over immediately. When § 87(2)(b) stopped his vehicle, PO Kelly had no reason to believe that § 87(2)(b) posed a serious risk of injury to either himself or PO Santomero. PO Kelly could not recall any reason to believe that § 87(2)(b) possessed a weapon.

PO Guillen testified (BR 09) he could not recall if he responded to any shots fired or shotspotter calls on the date of the incident. PO Santomero, assigned to a different vehicle nearby, conducted a vehicle stop of § 87(2)(b) car on the basis of vehicle infractions that PO Guillen did not personally observe. PO Guillen did not recall how he ended up at the scene of § 87(2)(b) vehicle stop, but testified that at the point § 87(2)(b) vehicle was stopped, PO Guillen had no reason to believe his life was in danger.

PO Melo testified (BR 10) that he and of the 47th Precinct Anti-Crime Team responded to either a shots fired call or shotspotter activation, but could not recall the exact location. PO Melo had no reason to believe that the shots were fired from a vehicle. PO Melo was on the scene of this job for less than a half an hour at which point he observed § 87(2)(b) vehicle travel above the legal speed limit and fail to signal while changing lanes. PO Melo and his partner, PO Merrick, entered their vehicle and began to follow § 87(2)(b) PO Santomero pulled his vehicle in front of § 87(2)(b) and conducted a vehicle stop based on these vehicle infractions. PO Melo had no reason to believe that § 87(2)(b) was dangerous at the point at which his vehicle was stopped. PO Melo testified that § 87(2)(b) vehicle stop was unrelated to the shots fired or a shotspotter activation to which officers originally responded.

PO Santomero's BWC (BR 24) captures him exiting the driver's seat of his police vehicle at 0:10 on the player timestamp. At 0:13, PO Santomero is captured pointing his gun in his right hand at § 87(2)(b) who is seated in the driver's seat with his front driver's side window rolled down approximately four inches. PO Santomero points the gun for three seconds as he walks

towards § 87(2)(b) vehicle before holstering it. PO Santomero then reaches into § 87(2)(b) driver's side window and opens the driver's side door manually, at which point § 87(2)(b) steps out of the vehicle.

A review of the 47th Precinct's Event Summary from April 22nd, 2020 (BR 11), as well as the neighboring 49th Precinct's Event Summary from April 22, 2020 (BR 23), yielded no possible events with a listed disposition of 10-10, the disposition associated with a shots fired call or shotspotter activation.

PO Santomero, PO Kelly, PO Guillen and PO Melo had no entries in their memo books regarding responding to a shots fired call or a shotspotter activation (BR 12-15).

NYPD Patrol Guide Procedure 221-01 (BR 16) states that the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable.

PO Santomero testified that he drew and pointed his gun at § 87(2)(b) because he believed § 87(2)(b) could be armed, based on § 87(2)(b) traffic violations, namely, his tinted windows, and reckless driving, along with his observation of § 87(2)(b) driving in the area of an earlier shots fired call. However, as noted above, the investigation was unable to find any corroborating evidence of a shots fired call or a shotspotter activation per the 47th and 49th Precinct's Event Summary. Furthermore, PO Kelly and PO Merrick testified they had no recollection of responding to a shots fired call or shotspotter on the date of the incident. The investigation determined that § 87(2)(b) mere presence near the scene of an unconfirmed shots fired call did not amount to § 87(2)(b) involvement in any such incident, nor did it specifically indicate § 87(2)(b) being armed. PO Santomero's only other justifications for pointing his gun at § 87(2)(b) were § 87(2)(b) vehicle infractions, namely his tinted windows, ignoring at least one stop sign, and PO Santomero's initial observation of § 87(2)(b) driving recklessly. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B) Abuse of Authority: On Adea Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero threatened § 87(2)(b) with the use of force.

It is undisputed after § 87(2)(b) was handcuffed, he began a verbal altercation with PO Santomero. § 87(2)(b) told PO Santomero that if PO Santomero were not wearing a shield, he would, "slap the shit out of [him]." PO Santomero replied, "I'll take it off," in reference to his shield.

PO Santomero testified that § 87(2)(b) told him "Take it off," which PO Santomero understood to mean "Take off your badge and gun and fight me." PO Santomero stated, "Okay, I'll take [my shield] off." PO Santomero testified that this remark meant he was going to take off his shield and gun once he returned to the stationhouse, as is customary.

PO Santomero's BWC (BR 24) captures § 87(2)(b) in handcuffs standing near the rear of his vehicle. At 03:53 on the player timestamp, § 87(2)(b) states, "If you weren't wearing that badge, I'd slap the shit out of you," as he is being led to a police vehicle by PO Merrick. PO Santomero states, "I'll take it off," at 3:55 on the player timestamp.

NYPD Patrol Guide Procedure 221-01 (BR 16) states that the primary duty of all members of the service is to protect human life, including the lives of individuals being placed in police custody. Members of service are prohibited from using any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault.

§ 87(2)(g) PO Santomero's testimony that his remark, 'Ok I'll take [my shield] off,' was in reference to the customary action of removing one's gun and shield once an officer returns to the stationhouse. PO Santomero testified he understood § 87(2)(b) statement to be about a physical altercation, thus, it made little contextual sense that PO Santomero was speaking about the unrelated removal of his shield at the stationhouse. As § 87(2)(b) was already in handcuffs at the time this statement was made and was not otherwise attempting to escape custody, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: On Adea Avenue between Laconia Avenue and Yates Avenue in the Bronx, Police Officer Nicholas Santomero seized § 87(2)(b) property.

It is undisputed that after § 87(2)(b) the sole occupant of the vehicle, was placed under arrest for reckless driving and removed to the 47th Precinct stationhouse, § 87(2)(b) vehicle was also seized and brought to the 47th Precinct stationhouse.

PO Santomero testified that he considered § 87(2)(b) to be under arrest after he stopped the vehicle for reckless driving, tinted windows, and failure to yield to an emergency vehicle. PO Santomero testified that at the 47th Precinct stationhouse, he released § 87(2)(b) with summonses for these infractions. PO Santomero testified that if the sole operator of a vehicle is arrested, their vehicle should be transported to the stationhouse. PO Santomero did not leave § 87(2)(b) vehicle legally parked on scene because "that is not the NYPD procedure" in such circumstances.

Vehicle and Traffic Law 511-C (BR 17) states that, "A vehicle may be seized upon service of a notice of violation upon the owner or operator of a vehicle. The seized motor vehicle shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers, Rochester and Buffalo the seized motor vehicle shall be delivered to the custody of the police department of such cities."

Per Patrol Guide Procedure 218-01, (BR 22) members of service are to record and process property, including vehicles, coming into police custody under the category of safekeeping, among other categories.

At the time of vehicle seizure, PO Santomero considered § 87(2)(b) to be under arrest and ultimately served § 87(2)(b) several notices of violation for reckless driving, window tints, and failure to yield to an emergency vehicle. As § 87(2)(b) was the operator and sole occupant of the vehicle, and as PO Santomero testified he could not leave § 87(2)(b) vehicle parked at the scene, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: At the 47th Precinct Stationhouse, Police Officer Paul Kelly threatened § 87(2)(b) with the use of force.

In a follow up phone call after his interview, § 87(2)(b) (BR 18) testified that after being released from the 47th Precinct stationhouse with summonses, he had further interaction with PO Kelly. Specifically, PO Kelly told him "Hey big man, we get off at 10:00 – scratch that, we get off at 9:45, we'll see you at 9:45." § 87(2)(b) stated he believed this was a threat of force, similar to his earlier interaction with PO Santomero threatening to remove his shield for the purposes of a physical altercation.

PO Kelly testified that he did not make this remark to § 87(2)(b) nor did he hear any other officers make this remark to § 87(2)(b)

PO Santomero testified that after § 87(2)(b) returned to the stationhouse, § 87(2)(b) calmed down and PO Santomero thus decided to release him with summonses. PO Santomero gave § 87(2)(b) the keys to his vehicle and had no further interaction with § 87(2)(b) after that. PO

Santomero testified he did not hear any officers make this remark to § 87(2)(b) PO Melo testified that after § 87(2)(b) pedigree information was taken and he was lodged in a cell, PO Melo returned to patrol and had no further interaction with him. PO Guillen testified he returned to patrol from the scene of § 87(2)(b) initial arrest and had no further interaction with § 87(2)(b) after § 87(2)(b) was removed from the incident location.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- PO Santomero has been a member of service for seven and has been a subject in four CCRB complaints and eleven allegations, of which one was substantiated:
 - 201904055 involved a substantiated allegation of abuse of authority (vehicle search) against PO Santomero. The Board recommended formalized training and the NYPD imposed formalized training.
 - § 87(2)(g)
- PO Kelly has been a member of service for six years and has been named a subject in two CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)
- PO Melo has been a member of service for four years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Guillen has been a member of service for nine years and has been named a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 8th, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 20).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad: 14

Investigator: C.V. Inv. Carlo Vescovi 11/15/21
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 11/17/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date